82-440

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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1982 TERM

In re FARMERS UNION CENTRAL EXCHANGE, INC.; FARMERS PETROLEUM COOPERATIVE, INC.; FCX, INC.; LANDMARK, INC.; LAND O'LAKES, INC.; MIDLAND COOPERATIVES, INC.; MFA OIL COMPANY; and TENNESSEE FARMERS COOPERATIVE, Petitioners.	On Petition for a Writ of Mandamus to the United States Bankruptcy Court for the Northern District of Illinois

MOTION FOR A STAY OF PROCEEDINGS PENDING A DETERMINATION ON THE PETITION FOR A WRIT OF MANDAMUS

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TO THE HONORABLE JUSTICE STEVENS:

Pursuant to Supreme Court Rule 44, petitioners respectfully move that the Court stay all proceedings below pending a determination by the Court on their Petition for a Writ of Mandamus. The petition seeks an order directing the Bankruptcy Court for the Northern District of Illinois to dismiss the complaints against petitioners on the grounds that "the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim." Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 102 S.Ct. 2858, 2880 n.40 (1982).

Petitioners* are defendants in two actions brought under the jurisdictional statute declared unconstitutional in Northern Pipeline. The complaints against petitioners seek more than $250,000,000 in damages under various theories, all arising under state law. The parties are just beginning an extensive deposition program; notices have already been filed for well over 100 depositions.

Because of the enormous expense involved in proceeding with this litigation, and because much that is done may have to be repeated when the cases are re-filed in a court of competent jurisdiction, this Court should stay the proceedings below until it can rule on the petition for a writ of mandamus. There is ample precedent for granting such relief. See, e.g., First Jersey Securities, Inc. v. Bergen, 605 F.2d 690, 692 (3d Cir. 1979), cert. denied, 444 U.S. 1079 (1980) (discovery stayed; mandamus ultimately granted dismissing complaint for lack of jurisdiction); Exchange National Bank of Chicago v. Wyatt, 517 F.2d 453 (2d Cir. 1975) (proceedings stayed; mandamus ultimately denied).

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* Petitioners' statement under Supreme Court Rule 28.1 is contained in their Petition for a Writ of Mandamus.

In addition, a stay will serve the public interest in ensuring that the Constitution is obeyed and that bankruptcy judges cease hearing cases which can only be heard by Article III judges. Such a stay should not cause any hardship to the plaintiffs, for they can immediately re-file their complaints in state court.

WHEREFORE petitioners respectfully move that the Court enter an order staying the proceedings below pending a determination on their Petition for a Writ of Mandamus.*

Respectfully submitted,



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* Petitioners initially moved in the Bankruptcy Court for a stay pending appeal. That motion was denied (Exhibit A) on the basis of a General Order entered by the District Court for the Northern District of Illinois, which stated that "no stay of any proceedings in the bankruptcy court prior to 4 October 1982 is warranted by the Marathon decision." (Appendix to the Petition for a Writ of Mandamus, p. 7a). The Seventh Circuit never ruled on petitioners' motion for a stay. (Appendix, p. 1a).

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE ENERGY COOPERATIVE, INC., Debtor	No. 81 B 005811 (Chapter 11 Case) Judge Hertz
ENERGY COOPERATIVE, INC., Plaintiff, and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al., Intervening Plaintiffs, v. FARMERS UNION CENTRAL EXCHANGE, INC., et al., Defendants.	Adversary No. 81 A 3286
ENERGY COOPERATIVE, INC., et al., Plaintiffs, v. THE PERMIAN CORPORATION, et al., Defendants.	Adversary No. 81 A 2075

ORDER

This matter coming before this Court on the motion of the Member Owners to stay further proceedings pending appeal of the denial of their motions to dismiss or stay this action, and the Court having received memoranda and heard arguments,

IT IS HEREBY ORDERED that the motion to stay further proceedings pending appeal is hereby denied. (General Order of the Chief Judge of the United States District Court, Northern District of Illinois, dated July 14, 1982; Northern Pipeline Construction Co. v. Marathon Pipeline Co., et al., Nos. 81-150 & 81-156, decided June 28, 1982, p. 38. Judgment stayed until October 4, 1982.)

ENTER:

FREDERICK J. HERTZ
U. S. BANKRUPTCY JUDGE

Dated: July 29, 1982

AFFIDAVIT OF SERVICE

David Schiffman, an attorney, certifies that on September 14, 1982, three copies of the Petition For A Writ of Mandamus and one copy each of the Motion For An Expedited Determination and the Motion For A Stay of Proceedings Pending a Determination On The Petition For A Writ Of Mandamus were served by Federal Express upon the Solicitor General, Department of Justice, Washington, D.C. 20530, and by first-class mail, with postage prepaid, upon the Honorable Frederick J. Hertz, United States Bankruptcy Judge and upon each person listed in the attached Service List. All parties required to be served have been served.

David Schiffman

SUBSCRIBED AND SWORN TO
before me this 14th day
of September, 1982.

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